

## § 167.2

## 12 CFR Ch. I (1–14 Edition)

insignificant amount of the outstanding principal amount on that loan.

*State.* The term *state* means any one of the several states of the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

*Structured financing program.* The term *structured financing program* means a program where receivable interests and asset-or mortgage-backed securities issued by multiple participants are purchased by a special purpose entity that repackages those exposures into securities that can be sold to investors. Structured financing programs allocate credit risk, generally, between the participants and credit enhancement provided to the program.

*Subsidiary.* The term *subsidiary* means any corporation, partnership, business trust, joint venture, association or similar organization in which a Federal savings association directly or indirectly holds an ownership interest and the assets of which are consolidated with those of the Federal savings association for purposes of reporting under GAAP. Generally, these are majority-owned subsidiaries.<sup>1</sup> This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting association has not held the interest for more than five years or a longer period approved by the OCC.

*Tier 1 capital.* The term *Tier 1 capital* means core capital as computed in accordance with § 167.5(a) of this part.

*Tier 2 capital.* The term *Tier 2 capital* means supplementary capital as computed in accordance with § 167.5 of this part.

*Total assets.* The term *total assets* means total assets as would be required to be reported for consolidated entities on period-end reports filed with the OCC in accordance with GAAP.

<sup>1</sup>The OCC reserves the right to review a Federal savings association's investment in a subsidiary on a case-by-case basis. If the OCC determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary, it will make such determination regardless of the percentage of ownership held by the savings association.

*Traded position.* The term *traded position* means a position retained, assumed, or issued in connection with a securitization that is rated by a NRSRO, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(1) Unaffiliated investors to purchase the security; or

(2) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

*Unconditionally cancelable.* The term *unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the Federal savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility. In the case of home equity lines of credit, the savings association is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

*United States Government or its agencies.* The term *United States Government or its agencies* means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

*United States Government-sponsored agency or corporation.* The term *United States Government-sponsored agency or corporation* means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

### § 167.2 Minimum regulatory capital requirement.

(a) To meet its regulatory capital requirement a Federal savings association must satisfy each of the following capital standards:

(1) *Risk-based capital requirement.* (i) A Federal savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-

weighted assets as measured under § 167.6 of this part.

(ii) A Federal savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 167.5 of this part.

(2) *Leverage ratio requirement.* (i) A Federal savings association's minimum leverage ratio requirement shall be the amount set forth in § 167.8 of this part.

(ii) A Federal savings association must satisfy this requirement with core capital as defined in § 167.5(a) of this part.

(3) *Tangible capital requirement.* (i) A Federal savings association's minimum tangible capital requirement shall be the amount set forth in § 167.9 of this part.

(ii) A Federal savings association must satisfy this requirement with tangible capital as defined in § 167.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) [Reserved]

(c) Federal savings associations are expected to maintain compliance with all of these standards at all times.

### § 167.3 Individual minimum capital requirements.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a Federal savings association that varies from the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement that would otherwise apply to the savings association under this part.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement required under this part may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) A Federal savings association receiving special supervisory attention;

(2) A Federal savings association that has or is expected to have losses resulting in capital inadequacy;

(3) A Federal savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

(4) A Federal savings association that has poor liquidity or cash flow;

(5) A Federal savings association growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by other OCC regulations or other guidance;

(6) A Federal savings association that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or savings associations with which it has significant business relationships, including concentrations of credit;

(7) A Federal savings association with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) A Federal savings association that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) A Federal savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual Federal savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is